



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

CENAO-CO-R
03-RP-17

REGIONAL PERMIT

Effective Date: August 14, 2003

Expiration Date: August 14, 2008

Authorized Activity: The installation of open pile piers, mooring piles, certain covered boat houses and devices associated with shellfish gardening, for private use.

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) to install open pile piers, mooring piles, covered open-sided single boat slips or lifts, and devices associated with shellfish gardening, for private use in certain navigable waters of the United States within the Commonwealth of Virginia.

Activities authorized under this regional permit do not require further authorization under the provisions contained in 33 CFR 325 unless the District Engineer determines, on a case-by-case basis, that additional review is in the public interest.

The attached Certificate of Compliance must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1096 within 30 days of completion of the project. A permit from the Virginia Marine Resources Commission to encroach upon State bottoms and/or a local building permit may be required for work authorized by this regional permit. Those activities on the Potomac River extending beyond the mean low water line may need authorization by the Maryland Department of Natural Resources. Authorization may also be needed from the Tennessee Valley Authority for projects constructed on the Clinch and Holston Rivers.

This regional permit covers only those activities within the limits described in the general and special conditions contained in this announcement. This does not mean that construction outside the limits outlined in the regional permit cannot be performed; only that such construction must be approved and authorized by an individual permit. If a proposal does not meet the conditions of this regional permit, a joint permit application must be submitted to the Norfolk District for review. This application can be obtained by writing to the District at the above address or telephoning (757) 441-7652.

The intent is to allow open-pile structures to be built in locations that would not individually or cumulatively impact general navigation. For the purpose of this permit, private use is defined as non-commercial, residential use only and does not include community structures (e.g. structures to be used by the residents of a condominium complex, members of a specific homeowners association, etc.).

The provisions of this regional permit **DO NOT** apply to:

- a. Structures proposed channelward of the limit lines described in special condition 1.
- b. Structures proposed that specify or require a mooring plan where moored vessels will extend channelward of the limit lines described in special condition 1.
- c. Structures proposed outside the areas designated for the general permit.
- d. Construction where dredging and/or filling in the waterway is proposed as part of the project.

- e. Piers intended for commercial or government use including marinas, marine railways, fueling facilities, and toilet facilities.
- f. Construction in Broad Creek in Middlesex County, Fisherman's Cove in Norfolk, and the Salt Ponds in Hampton which were the subject of navigational studies which concluded that these waterways were not suitable for inclusion in any regional permit.
- g. If the proposed construction will occur in one of the following reaches which serve as habitat for federally listed threatened or endangered species, you must notify the Corps via the submission a Joint Permit Application and receive written notification from the Corps before proceeding with the work:

Sensitive Joint-Vetch

- 1. The Potomac River in Stafford County;
- 2. The Rappahannock River in King George, Essex, Richmond, and Westmoreland Counties;
- 3. The Mattaponi River in King William and King and Queen Counties;
- 4. The Pamunkey River in King William and New Kent Counties; and
- 5. The James River and Chickahominy Rivers in Charles City, James City, New Kent, and Prince George Counties.

Bald Eagle

- 1. The Potomac River in King George County adjacent to the Caledon Natural Area and in Fairfax County adjacent to Mason Neck Wildlife Refuge and Mason Neck State Park;
- 2. The James River in Chesterfield, Charles City, Henrico, Prince George, Surry Counties; and
- 3. The Rappahannock River in Caroline, King George, Essex, Richmond, and Westmoreland Counties.

Maps showing these specific river reaches can be found on our web site listed above.

- h. The construction of piers & placing of mooring piles in the following waterways, which have Federal Project Channels:
 - 1. Lower North Landing River from Blackwater Creek to the North Carolina State Line (Atlantic Intracoastal Waterway).
 - 2. Hampton Roads (Channel to Newport News, Norfolk Harbor and anchorages).
 - 3. Chincoteague Channel and Inlet.
 - 4. The Elizabeth River, the Eastern Branch of the Elizabeth River to the Norfolk and Western Railroad Bridge, the Southern Branch of the Elizabeth River to a point 0.8 miles upstream of the I-64 Bridge, and the Western Branch of the Elizabeth River to a point 0.34 miles upstream of the West Norfolk Bridge.
 - 5. The James River from Richmond to Hopewell and including Richmond Harbor and the Richmond Deepwater Terminal.
 - 6. Little River (Creek) except the Northwest Branch and Pretty Lake.
 - 7. Norfolk Harbor Channel, all reaches.
 - 8. The York River from the Poropotank River to the Virginia Highway 33 bridge at West Point.

The remainder of the waterways containing Corps Federal Project Channels in Virginia (managed by Norfolk District except for those in the Potomac River Watershed which are managed by the Baltimore District) will require an 85-foot setback from the toe of the slope of the federally maintained channel unless otherwise noted. A copy of the appropriate Federal Project Channel map can be obtained by writing to the Regulatory Branch at the address on the first page of this regional permit. Also included are channels maintained by other federal agencies in Skiffes Creek adjacent

to Fort Eustis, the James River adjacent to the Maritime Administration, and Back Creek adjacent to Langley Air Force Base.

- i. The construction of a particular structure, the authorization or approval of which may require authorization by Congress or other agencies of the Federal Government.
- j. The construction of covered boatlifts or boathouses when a permit is required from the Commonwealth of Virginia (see regional permit 97-RP-19).

Special Conditions:

1. Piers may not extend more than one-fourth of the distance across the waterway measured from either the mean high water mark to the mean high water mark (including all channelward wetlands) or the ordinary high water mark to the ordinary high water mark (including all channelward wetlands). The measurement should be based on the narrowest distance across the waterway regardless of the orientation of the proposed pier. Authorizing this encroachment assumes that the deep water is located in the center of the waterway. When this is not the case, the Regional Permit will not apply and the proponent needs to submit a Joint Permit Application and obtain a separate permit from the Corps before commencing construction. Those proposed piers that will extend more than 300 feet from mean high water or ordinary high water will not qualify for this Regional Permit and the proponent must submit a Joint Permit Application.

2. The limits of authorized construction and channelward extent of moored vessels in Lake Rudee, Lake Wesley, Owl Creek, Carter Creek, Jackson Creek, Taylor Creek, Urbanna Creek, and Broad Bay are indicated by the dashed lines on the series of large scale drawings which were the result of navigational studies for these waterways. A copy of the appropriate regional permit map may be obtained by writing to the Regulatory Branch at the address on the first page of this regional permit.

3. A proponent of work proposed in portions of the following waterways must obtain an easement to cross government property from our Real Estate Branch before any construction can take place in the

- a. James River
- b. Lynnhaven Inlet and Connecting Waters
- c. All Local Cooperation Agreement areas
- d. Dismal Swamp Canal
- e. Albemarle and Chesapeake Canal
- f. Appomattox River
- g. Atlantic Intracoastal Waterway.

For further information regarding the government easement, please contact the Norfolk District's Real Estate Branch at the address on the first page of this regional permit or call them at 757.441.7737.

4. The permittee recognizes the possibility that the structures permitted herein may be subject to damage by wave wash from passing vessels. This regional permit does not relieve the permittee from taking all proper steps to insure the integrity of the structures permitted herein and the safety of boats moored thereto from damage from wave wash and the permittee shall not hold the United States liable for any such damage.

5. All structures will be of suitable materials and practical design so as to reasonably ensure a safe and sound structure. All piers that cross wetland vegetation shall be an open-pile design, up to five (5) feet wide and have minimum elevation of at least four (4) feet between the decking and the wetlands substrate. We are soliciting public comments on the following two options: 1) you are allowed a 15 foot distance from the landward end of the pier to "ramp up" the pier to the required elevation or 2) you must achieve the required elevation from the mean high water mark or ordinary high water mark.

6. A pier may be constructed in and over wetland areas to allow access. Such piers shall be attached to the upland at a point landward of mean high water. Mooring piles will be permitted in wetland areas for the purpose of boat mooring only if sufficient water depths exist to float the vessel during periods of low water without alteration of the wetland.
7. Subject to any applicable local ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a single boat slip or lift. In cases where such roofs exceed 700 square feet, or those cases where a permit is required from the Commonwealth of Virginia, Norfolk District's RP-19 or ASP-18 will be used in lieu of this permit.
8. A permit for a certain structure or activity does not imply that future dredging proposals will be approved.
9. The proposed structure(s) (including any moored vessels) should be located on the property in accordance with the local zoning requirements.
10. Devices used for shellfish gardening shall be attached directly to a pier and limited to a total of 160 square feet. Property owners will insure they are in compliance with the Virginia Marine Resource Commission's Regional permit for shell fish gardening and the applicable Special and General conditions of this permit.
11. If the display of lights and signals on the structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained at the expense of the permittee. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6230.
12. If and when the permittee desires to abandon the authorized activity he or she must restore the area to a condition satisfactory to the District Engineer unless the permittee is transferring his or her interest to a third party. See general condition number 17.
13. The Secretary of the Army or his authorized representative may direct the permittee to restore the waterway to its former condition, with no expense to the United States. If the permittee fails to comply with the directive, the Secretary or his representative may restore the area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
14. No activity may cause more than a minimal adverse effect on an adjacent property owner's right of access to navigable waters.
15. Floatation units will be made of materials that will not become waterlogged or sink if punctured. Floating sections must be braced so they will not rest on the bottom during periods of low water.
16. Any structure authorized shall be properly maintained, including maintenance to ensure public safety.

General Conditions:

1. This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative.

3. (a) No activity is authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the Norfolk District if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Authorization of an activity by a this permit does not authorize the “take” of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g. an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world web pages at <http://www.fws.gov/~r9endspp/endspp.html> and http://kingfish.spp.mnfs.gov/tmcintyr/prot_res.html#ES and recovery, respectively.

4. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places.

5. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify the Norfolk District of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

6. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. Authorized activities must comply with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”.

8. No activity may cause more than a minimal adverse effect on navigation.

9. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

10. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

11. The construction or work authorized by this permit will be conducted in a manner so as to avoid any degradation of water quality and/or damage to aquatic life where possible, and minimize any degradation where unavoidable. Also, you will employ measures to prevent or control spills of fuels or lubricants from entering the waterway.

12. Permittees are expected to fully comply with Virginia Administrative Code 9 VAC 25-260-10, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.
13. The permittee will make every reasonable effort to conduct the construction or operation of the work authorized by this permit in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.
14. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
15. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
16. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.
17. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.
18. In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.
19. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to this office for consideration at least one month before the permit expiration date.
20. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.
21. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
 - e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 441-7735.
22. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.

23. The Norfolk District may reevaluate its decision on your authorization under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 20 above).
- c. Significant new information surfaces which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 406).

24. This regional permit, unless further modified, suspended or revoked, will be in effect until August 14, 2008. Upon expiration, it may be considered for revalidation.

Date

Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
Commanding